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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re M.N., a Person Coming Under the
Juvenile Court Law.

MARIN COUNTY HEALTH & HUMAN
SERVICES,

Plaintiff and Respondent,

v.

Shannon N.,

Defendant and Appellant.

A155791

(Marin County
Super. Ct. No. JV26675A)

After an incident of domestic violence between Shannon N. (Mother) and Stephen G. (Father) that took place while M.N. (Minor) was in the home, Marin County Health and Human Services (Department) filed a juvenile dependency petition. The juvenile court held a hearing and sustained the allegations of the petition. Mother argues that the juvenile court's jurisdictional finding is not supported by substantial evidence and that the court abused its discretion in denying her request for a continuance in order to present additional evidence regarding a safety plan she had previously entered into with the Department. We reject the argument and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother is the mother of four children, including Minor, whose alleged father is Father. Minor was born in June of 2017.

On July 13, 2018, the Department filed a juvenile dependency petition pursuant to Welfare and Institutions Code, section 300, subdivision (b)(1), with respect to all four children.¹ The petition alleged that there was a substantial risk that the children will suffer serious physical harm or illness “as a result of the failure or inability of [Mother] to protect the children from ongoing domestic violence,” and made the same allegations with respect to Father.

According to the July 16 initial report accompanying the petition, on June 16, 2018, Mother’s then 10-year old son L.N. called 911 and reported domestic violence. Father came to Mother’s house, where all four children were present, and the two got into an argument in the garage. Father would not leave when repeatedly asked to do so by Mother. The argument escalated and Father repeatedly punched Mother in the face and torso. L.N., Minor, and another child were in the living room at the time of the incident and heard Mother scream for them to call the police. L.N. did so, telling the operator that he could hear “ ‘his mother’s boyfriend assaulting his mother.’ ” Father then entered the home and took the phone from L.N., ending the call to 911. Father fled from law enforcement but later turned himself in and was arrested. A police report indicated Father had four previous arrests on charges of domestic violence.

Social worker Loren Rothberry interviewed Mother and the children on June 26. Mother reported that she had a safety plan in place from a prior incident with Father. According to the safety plan, Father was supposed to leave whenever asked to do so by Mother. Mother had been in a secure confidential location with her children since the June 16 incident. Also as a result of that incident, there was an emergency protective order issued to protect her and she was working to obtain a domestic violence restraining order.

¹ Minor’s case was bifurcated from that of Mother’s other three children, who have different fathers.

According to the report, Mother said that “if [Father] showed up to apologize, [Mother] would not call the police,” and that she “would not feel comfortable calling the police unless he became aggressive towards her.” Mother’s hesitation to involve the police “stemmed from the fact that previously, [Father] has manipulated law enforcement to arrest [Mother] for battery following an incident of domestic violence perpetrated against her.”

On July 2, Rothberry spoke with Mother on the phone. Mother said that she had been living at her home with the children instead of at the secure location discussed in their conversation on June 26. Mother believed that over the previous weekend, Father had entered her property and taken his paint machine from a shed at the back of the house. He had been “exhibiting some online stalking and intimidation behaviors,” including posting her passwords for email and bank accounts online. Mother also noted that in the past Father had taken the home’s sliding glass door off the hinges, even when it was locked, and reattached the pull system opening the side gates when Mother had disabled it. Father had also been driving past her house on his motorcycle “almost daily.”

On July 6, Rothberry attended a meeting with Mother at the Department, at which the Department attempted to set up a safety plan to protect Mother and the children from further exposure to domestic violence. Mother “expressed fear that [Father] has previously entered [Mother’s] home without permission in the past.” According to the report: “[Mother] stated that she would not feel comfortable calling law enforcement in this situation, especially if the situation was calm and cordial. In addition, [Mother] stated that the children have never been upset by the exposure of domestic violence, and that her concern lies mainly with the disruption in their routine because of the domestic violence. [Mother] denied that the children were upset by her injuries and the visit to the hospital following this most recent incident. Lastly, [Mother] expressed frustration with the Department and stated that she did not understand why the Department was involved or ‘punishing’ her for [Father’s] actions.”

The petition concluded by recommending that the juvenile court order the children to remain in Mother's care and that the matter be set for a jurisdictional and dispositional hearing.

Such a hearing was eventually held on November 5, before which hearing the Department filed two more versions of the petition, dated August 15 and October 3, and two accompanying jurisdiction and disposition reports, dated August 20 and October 3.

The August 20 report described a November 2017 incident in which law enforcement responded to a verbal and physical altercation between Mother and Father during which Father kicked down two doors, entered the home, and took Mother's cell phone, preventing her from calling for help. Two of the children witnessed the incident, while Minor and another child were in the home but did not. Father was arrested and charged with several felonies arising out of the incident.

The report also discussed another incident of domestic violence involving Father on April 9, 2015, and an incident of domestic violence involving mother and the father of two of the other children on March 6, 2009.

At the hearing, counsel for Father indicated that he had reached an agreement with the Department, would submit on the issue of jurisdiction, and would receive discretionary services. Mother's counsel indicated that she would contest jurisdiction.

The only witness at the hearing was social worker Lucia Viera. On cross-examination, Viera was asked about a safety plan created between Mother and the Department, as well as the meeting between Mother and Rothberry that took place on July 6. Here is the exchange with Mother's counsel about the contents of the safety plan:

"Q. Are you aware of the content, or what was discussed in that meeting with the ER worker?

"A. Only what I read, but I do not remember everything that is in that report.

"Q. Okay. So there were like notes from that meeting that you read?

"A. And the actual safety plan that was done with [Mother].

"Q. Okay. So there was an actual safety plan that was done?

“A. Yes, handwritten with the ER worker, but I don’t remember the date, so I can’t say it was July 6th. [¶] . . . [¶]

“Q. And you don’t remember what else was part of that safety plan, th[e]n, that was created that day?

“A. Hold on, because I do have some notes in here. So—no, I don’t know what else she agreed besides what she had said before that was, that she would ask him to leave, but I remember that also she said that if he came in to apologize than she wouldn’t be calling the police.”

At the conclusion of the hearing, Mother’s counsel indicated that she wished to call “Ms. Rothberry, the emergency response worker, to ask questions about this safety plan.” The court asked for an offer of proof, and Mother’s counsel responded: “The Department has indicated that they filed this petition because mother is not able to protect her children, and my argument is that mother has fully complied with the safety plan that the Department set up with her on July 6th, and this witness was not able to provide the contents of that safety plan.”

The court found that the safety plan was “a very tiny slice of [the big] picture,” and denied the request for a continuance. Mother’s counsel again requested a continuance in order to bring in two witnesses who “will attest to the mother’s participation in services, as well as her allegiance to the safety plan that was created with the mother between her and the Department.” The court reiterated that “mother’s allegiance to a safety plan over the last few months is but a small issue, and I’m not sure that it’s one that really is dispositive on the issue of jurisdiction.” The court also noted that any witnesses were supposed to be present for the hearing, to which Mother’s counsel responded that “I asked the witnesses to be present today and they are not present.” The court then denied the second request for a continuance.

The court went on to sustain the allegations of the petition:

“THE COURT: Now, I go back and look at this, we’ve got almost a ten year history. We have domestic violence with partner number one, and dependency intervention.

“And we have domestic violence with partner number two a few years later. April 9th, 2015, we have domestic violence with this partner. We have a voluntary case plan which requires you to protect your children.

“But we have another incident of domestic violence in 2017, and another incidence of domestic violence in 2018.

“Now, you protecting yourself, that’s one issue, and I’m not criticizing you, but there is a failure to protect the children from being exposed to domestic violence, that’s the issue here.

“And I hope, you know, maybe, maybe this is the time, maybe, you know, these last few months have really made a change in you, but I have a lot of concern against this back drop about that ability, and the allegations of the petition they are what they are, and I’m going to sustain those allegations as true.

“Whether you’ve taken steps in the last few months, well, that’s great, but given this history and this back drop there is still a significant risk to these children.”

The court sustained the allegations of the petition, ordered Minor to remain in the home with Mother under a family maintenance plan with supervised visits from Father, and scheduled an in-home status review for April 29, 2019. Mother appeals.

DISCUSSION

Mother argues that the juvenile court’s jurisdictional finding was not supported by substantial evidence and that the court abused its discretion in denying her request for a continuance in order to permit her to present additional evidence regarding the safety plan.

Welfare and Institutions Code section 300, subdivision (b)(1) provides that a child comes within the jurisdiction of the juvenile court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child”

To establish jurisdiction under Welfare and Institutions Code section 300, subdivision (b), the Department must show that at the time of the jurisdictional hearing

the child is at substantial risk of serious future harm. (*In re James R.* (2009) 176 Cal.App.4th 129, 135; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1399.) In making this determination, the court may consider past events where there is a reasonable basis for believing they will recur. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) “Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300” at the jurisdiction hearing. (Welf. & Inst. Code § 355, subd. (a).) “On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.]” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

Substantial evidence supports the conclusion that Minor was at substantial risk of serious future harm from exposure to domestic violence. As the juvenile court noted, Mother had an almost ten-year history of being involved in domestic violence incidents with three different partners, including Father. Minor, who was approximately one and a half years old at the time of the jurisdictional hearing, had already been present in the home for two incidents of domestic violence during his life. In the November 2017 incident, Father broke into the home by kicking two doors down and got into an altercation with Mother, an altercation witnessed by two of the four children. In the June 16 incident, Minor was in the living room with L.N., who heard their mother screaming for him to call 911. In addition, Mother’s other children had been present in the home for various incidents of domestic violence before Minor was born. Indeed, the initial petition report reflects that both L.N. and another of Mother’s children told Rothberry that domestic violence was “normal.” This is substantial evidence in support of the conclusion that Minor was at substantial risk of serious future harm through exposure to domestic violence. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [“[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it”]; *In re E.B.* (2010) 184 Cal.App.4th 568, 576 [“ ‘Both common sense and expert opinion indicate spousal abuse is detrimental to children’ ”].)

Mother's effort to distinguish *In re Heather A.*, *supra*, 52 Cal.App.4th 183, is unpersuasive. She argues that unlike the children in that case, Minor was never directly exposed to domestic violence, and there was no evidence that Minor was upset by the violence that did take place. But neither is required, because substantial evidence shows Minor was at substantial risk of exposure to domestic violence and its attendant effects in the future. Mother and Father had a history of domestic violence, and Father had in the past entered the home without permission. And Minor was put at risk of harm from domestic violence in the home, even if he had not directly witnessed it in the past. As *In re Heather A.* put it, in language equally applicable here, "the children were put in a position of physical danger from this violence, since, for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by [their mother] falling against them." (*Id.* at p. 194.)

Mother argues that the juvenile court's findings are not supported by substantial evidence because she "made every effort to protect [Minor] from domestic violence, and was fully willing to make such efforts in the future." In particular, Mother alleges that after the June 16 incident she followed her safety plan by moving with her children to an emergency shelter, seeking a domestic violence restraining order, and notifying her children's school and daycare that she had full custody of the children.

Except for the requirement that Father leave the home when asked to do so by Mother, Mother's brief does not state what the contents of the safety plan were. However, it is undisputed that neither Mother's compliance with the safety plan nor any of her other actions protected Minor from exposure to domestic violence during the June 16 incident. More generally, Mother's argument regarding her actions fails because there is no requirement that a parent be at fault in order to support a jurisdictional finding under the first clause of section 300, subdivision (b)(1). (See *In re R.T.* (2017) 3 Cal.5th 622, 632–635.) Put slightly differently, even accepting Mother's argument that "[t]here were no allegations that Mother could have done more than what she did," the jurisdictional finding is nevertheless supported by substantial evidence.

Mother points to her alleged remarks detailed in the July 16 initial petition report—that she would not feel comfortable calling the police if Father returned to the home, that her children were not upset by exposure to domestic violence, and that her children had not been upset by her injuries or trip to the hospital following the June 16 incident—arguing that the juvenile court did not understand the context of those remarks and that they were contradicted by other evidence. These arguments are simply requests for us to reweigh the evidence, an invitation we must reject. (See *In re D.B.* (2018) 26 Cal.App.5th 320, 328 [appellate court reviewing juvenile court’s jurisdictional finding does “not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts”].) The juvenile court did not discuss these remarks or indicate that it was relying on them, and as discussed, even without them there is substantial evidence in the record to support jurisdiction.

Finally, Mother argues that the juvenile court abused its discretion in denying her request that the hearing be continued so that she could present additional evidence regarding her compliance with the safety plan, in particular, the testimony of Rothberry and two additional witnesses.

We will not reverse a juvenile court’s denial of a continuance absent an abuse of discretion. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.) And we find none here. As discussed, and as the juvenile court noted, Mother’s compliance with the safety plan was not dispositive on the issue of jurisdiction. And Mother presented no justification for the continuance other than her assertion that she had requested that her witnesses appear at the hearing and they had failed to do so. (See Welf. & Inst. Code § 352, subd. (a)(2) [continuance of a juvenile court hearing “only upon a showing of good cause”].) The juvenile court was therefore well within its discretion to deny the request for a continuance.

DISPOSITION

The juvenile court’s order is affirmed.

Richman, J.

We concur:

Kline, P. J.

Stewart, J.

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